



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: CardioMetrix

File: B-256308

Date: June 6, 1994

Robert J. Loring for the protester.
H. Charles Coburn, Esq., Federal Bureau of Prisons, for the agency.
Daniel I. Gordon, Esq., and Paul I. Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected a late best and final offer where the offeror's initial proposal contained deficiencies which rendered it technically unacceptable.

DECISION

CardioMetrix protests the rejection of its proposal under request for proposals (RFP) No. 123-0409, issued by the Department of Justice, Federal Bureau of Prisons, for radiology services at the Federal Medical Center in Lexington, Kentucky.

We deny the protest.

The agency issued the RFP on August 25, 1993. Two offerors, including CardioMetrix, submitted proposals by the September 27 closing date for the receipt of initial proposals. CardioMetrix's initial proposal was evaluated as technically unacceptable due to a number of deficiencies which the protester does not dispute.

In a January 3, 1994, letter, the contracting officer advised CardioMetrix of the deficiencies in its proposal and requested that the offeror submit a best and final offer (BAFO) by a January 19 closing date. The letter noted that, as provided for in the RFP, the BAFO submission was subject to Federal Acquisition Regulation (FAR) § 52.215-10 regarding late submissions. That provision states, in relevant part:

"A modification resulting from the Contracting Officer's request for 'best and final' offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation."

Another section, paragraph (g), of that provision states:

"Notwithstanding [the general rule requiring rejection of late proposals], a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted."

CardioMetrix's BAFO, dated January 17, was sent by commercial carrier for next-day delivery. However, it was not received by the agency until January 24. CardioMetrix does not allege that the late receipt of its BAFO was due to mishandling by the government. The other offeror submitted a BAFO which was received by the January 19 closing date.

Relying on paragraph (g) of FAR § 52.215-10, CardioMetrix contends that its late BAFO should be considered because its initial proposal "would be successful based on CardioMetrix's excellent reputation, history and Technical Proposal" We disagree. One well-settled condition for acceptance of a late proposal or BAFO is that the offer must have been acceptable as originally submitted. Blue Cross of Maryland, Inc., B-194810, Aug. 7, 1979, 79-2 CPD ¶ 93. Here, it is undisputed that the deficiencies in CardioMetrix's initial proposal rendered it unacceptable as submitted. Accordingly, that initial proposal could not be the basis of award, and the late BAFO could not be considered to correct the deficiencies.

The protest is denied.



Robert P. Murphy
Acting General Counsel